

HIGH COURT OF CHHATTISGARH, BILASPUR

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CRA No. 1168 of 2014

- Chitrasen Pradhan @ Kaliya s/o. Shri Ratnakar Pradhan, aged about 24 years, r/o. Village K. Kardakna, Thana Bargarh, Dist. Ganjam (Orissa).

---- Appellant.

Versus

- State of Chhattisgarh through Police Station G.R.P. Raipur (CG).

---- Respondent

For Appellant	:	Mr. Samir Singh, Advocate.
For Respondent/State	:	Mr. Vinod Tekam, Panel Lawyer

Judgment on Board

(28-4-2018)

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-10-2014 passed by the Special Judge (Narcotic Drugs and Psychotropic Substance Act, 1985), Raipur in Special Criminal Case No. 234 of 2014, wherein the trial Court has convicted the appellant for commission of offence under Section 20 (B)(ii) (C) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "the Act, 1985) for having possession of contraband article Ganja measuring 48 kgs on 12-1-2014 at about 10.00 a.m., at Railway Platform No. 2/3 of Railway Station Raipur and sentenced him to undergo rigorous

imprisonment for ten years and to pay fine of Rs. 1,00,000/- with default stipulations.

2. As per prosecution case, on 12-1-2014 Incharge of Railway Police Station, Raipur received information that one person is coming in Pune – Ahamadabad Express train and he is in general bogie of the train and having contraband article Ganja. After receiving the said information, Police authorities recorded such information into Rojnamchasanha and after completing of legal formalities reached to the spot and informed the appellant about his right to be searched by any Gazetted Officer or Magistrate, but the appellant opted for search by the said Police Officer and after searching the appellant was found to be in possession of two trolley bags and the quantity kept in the said bags was subjected to physical balance and weight of the said quantity is 48 kgs of Ganja. All substance bags were mixed and two samples of 50 grams each were prepared and were sealed on the spot. Rest of the articles were also seized and sealed on the spot. The seized articles and samples were sent to Incharge of Malkhana of the said Police Station and samples were sent for chemical examination to Forensic Science Laboratory, Raipur through one Police Constable namely Suresh Kumar Mishra (PW/4) who deposited the same in FSL and after examination,

test of Ganja was found to be positive. Appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant would submit that the independent witnesses of seizure have not supported the case of the prosecution, therefore, conviction of the appellant under Section 20(B)(ii)(C) of the Act, 1985 is not sustainable. There are material omissions, contradictions and improvements in the version of Investigating Officer, therefore, offence is not proved beyond reasonable doubt. Sentence awarded by the trial Court is harsh, therefore, warrants interference by this Court. He would further submit that the ingredient of the offence is not established and there is lacuna of non-fulfilling the mandatory provisions mentioned in Section 52, 55 and 57 of the Act, 1985 and the trial Court while convicting the appellant has not considered the relevant aspects of the matter and thereby committed illegality.
4. On the other hand, learned counsel for the State submits that judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered while invoking the jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the material available on record.
6. To substantiate the charge, prosecution has examined as many as nine witnesses.

7. Police Inspector Shankar Chandrakar (PW/7) deposed that on 12-1-2014 he was informed that one male and one female are coming in Pune – Ahamadabad Express Train and they were having contraband article Ganja. This information was recorded by him as per Ex.P/3 and before recording he called two witnesses as per Ex.P/2. Again he prepared one panchnama as per Ex.P./4 for searching without warrant and copy of the same was sent to Deputy Superintendent of Police, Railway, Raipur. As per version of this witness, he supplied one notice as per Ex.P/.5 in which it is mentioned that the appellant has a right to be searched by any Gazetted Officer or Magistrate and thereafter the appellant gave consent to him to be searched by him. He further deposed that he and his staff members were searched and thereafter the appellant was searched and contraband articles were recovered from him. He further deposed that one bag of Chocolate colour was seized in which 12 packets of contraband articles were kept and it was measured to be 24 kgs and again the appellant kept contraband article Ganja in one black suit-case and it was also found to be 24 kgs of weight. He further deposed that two samples of 50 grams each were separated and sealed and articles were kept in Malkhana of the railway Police Station. As per version of this witness, samples were sent to FSL for examination as per memo Ex.P/23.

Version of this witness is supported by the version of Dharamraj Dhruv (PW/8), Head Constable and incharge of Malkhjana of Railway Police Station. As per version of this witness, he received contraband article from Station House Officer and kept the same in safe custody and two sample packets which were marked as Article/1 and Article/2.

8. True it is that PW/1 Mahesh and PW/2 Om stated that they were informed by the Police regarding seizure of contraband article, but if these witnesses have not seen the factum of seizure, they are not real witnesses and if they suppressed the fact even after participating in seizure proceeding, their version is not liable to be acted upon. There is no force in the submission on behalf of the appellant that if seizure witnesses are not supporting the case of the prosecution, the factum of seizure is not established.
9. It is settled principles of law that version of Police officer cannot be undermined only because he is a Police Officer. Police Officer Shankar Chandrakar (PW/7) was subjected to searching cross examination, but nothing could be elicited that he is having any grudge against the appellant to rope him in a false charge. In the present case, legal formalities have been proved by Head Constable Manmohan Singh (PW/6), Constable Purushottam Latore (PW/5) and constable Suresh Kumar Mishra (PW/4). Again formalities were proved by the evidence of constable

Jagdish Bisen (PW/3). From the evidence of Shankar Chandrakar (PW/7), it is proved that the articles were seized from the appellant and were kept in safe custody of Malkhana of Railway Police Station which is supported by the version of Head Constable PW/8 Dharamraj Dhruv. The samples were given to Suresh Kumar Mishra (PW/4) who deposited the same in FSL. Name of this constable is also mentioned in the report of FSL and as per FSL report, contraband article is Ganja and test of contraband was found positive.

10. Looking to the record, it cannot be said that any mandatory of directory provisions of the Act (Sections 52, 55 & 57) has been flouted by the authorities. The argument advanced on behalf of the appellant is not sustainable. Quantity of 48 kgs of contraband Ganja is a commercial quantity as per notification specified in small quantity and commercial quantity in exercise of sub-clause (vii) and (xxiii) of Section 2 of the Act which says that 20 kgs of more of contraband article is commercial quantity and 1 kg of contraband article is small quantity. In the present case, appellant was in possession of 48 kgs of contraband Ganja which was seized from him, therefore, the mischief of the appellant falls within Section 20 (B) (ii)(C) of the Act, for which minimum sentence is ten years and minimum fine of Rs.1,00,000/-. The trial Court awarded minimum sentence to the

appellant and less than minimum cannot be awarded, therefore, sentence part is also not liable to be interfered.

11. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju